

MONTANA WETLANDS LEGACY PROJECTS
CONTRACT NUMBER: SPB04-878P-A

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration, State Procurement Bureau (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts St., PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **OASIS Environmental, Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 92-0155937, 482 Electric Ave Suite 5, Bigfork MT 59911, and (406) 837-0804.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect upon full execution of all signatory parties, and terminate on June 30, 2008, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of three additional years. This renewal is dependent upon legislative appropriations.

3. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

4. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

5. SERVICES AND/OR SUPPLIES

Contractor agrees to provide the State with an expedited means of hiring qualified contractors to provide Wetland, Stream, and other Aquatic Resource restoration, enhancement, and development design and implementation for various projects around the State of Montana. This contract will be utilized primarily by FWP but other state agencies or public procurement units may utilize this contract in conjunction with wetland, stream, and other aquatic resource restoration, enhancement and development projects.

The Contractor may need to have access to engineering services depending on the nature of the project. The Contractor will be expected to use their own best judgment as to whether engineering services are needed for a given project. However, traditional engineering methodologies are not the emphasis of this contract. It is a violation of State Statute to practice engineering or land surveying without a license.

5.1 Design Expectations. FWP prefers stream restoration improvement techniques that simulate natural conditions and facilitate natural stream processes. The State is always open to new and innovative approaches that accomplish project goals providing these techniques have proven success.

5.2 Contractor Responsibilities. The selected contractor for an individual project is responsible for the supervision and implementation of the designs and is responsible for oversight of work performed by all subcontractors. In most cases the contractor will provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work. However, the State reserves the right to hire subcontractors (equipment and/or labor) if it will provide a cost savings to the State. The selected contractor is also responsible for clean up of the sites and must have the sites inspected by the State immediately prior to completion.

5.3 Permits. The Contractor is responsible for obtaining all necessary permits for each project, including but not limited to 404 permits, 310 (streambank preservation) permits, other permits, SHPO clearance, and water rights.

5.4 On-Site Requirements/Cleanup. When a contractor is contacted by the State to discuss a project, the State and the contractor will visit the job site to become familiar with conditions relating to the project and labor requirements. The State and chosen contractor will then cooperatively develop project feasibility, conceptual design and cost.

The Contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to their action or neglect.

The Contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The Contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the Contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the Contractor.

In terms of cleanup, the Contractor shall:

- (a) Keep the premises free from debris and accumulation of waste;
- (b) Clean up any oil or fuel spills;
- (c) Keep machinery clean and free of weeds;
- (d) Remove all construction smears and stains from finished surfaces;
- (e) Perform finishing site preparation to: (1) limit the spread of noxious weeds, and (2) smooth exposed ground surface to enhance aesthetics, provide silt-footing, and provide uniform bed for future revegetation work before final payment by the State;
- (f) Remove all construction equipment, tools and excess materials before final payment by the State; and
- (g) Install silt fences as necessary, prevent fall-back of excavated materials, and prevent any other potential violations of federal or state water protection laws during the period of construction.

5.5 Work Acceptance. The Contractor is responsible for project oversight as needed. The State may also periodically provide personnel for administrative oversight from the initiation of the contract through project completion. All work will be inspected by the State or designated liaison prior to approval of any contract payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

5.6 Records. The Contractor will supply the State with photo documentation of methods of habitat restoration progress throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

5.7 Communication. During a project the chosen contractor is required to make weekly contact with the State liaison, or other parties designated by the State for communications, to make arrangements for field inspections and project compliance. This communication must be made in person or by telephone conversation with designated liaisons. Voice mail recordings will not be considered communication unless approved by the State's project contact.

Remoteness of project sites may necessitate that the Contractor have some form of field communication such as a cellular phone. This communication is necessary to enable the State to respond to public concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. Weekly communication will commence when the chosen contractor initiates project implementation.

5.8 Project Monitoring and Reports to the Corps of Engineers. The Contractor is responsible for monitoring their projects and reporting to the Corps of Engineers about the development of wetland and stream function resulting from the project. In this way, the Corps will know whether wetland credit for the project has been earned.

5.9 Change of Staffing. Since qualifications of personnel were key in determining which offeror's were selected to be on this term contract, a written notification to the State Agency requesting services of any contractor changes of key personnel must be made prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the Agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Agency of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

5.10 Collaboration on Potential Projects. The State encourages collaboration between Contractors to increase the scope and effectiveness of services offered. All subcontractors to be used in any project must be approved by FWP or the authorized entity initiating the project.

6. PROJECT SELECTION

The State will be responsible for identifying projects, contacting landowners and securing necessary permission/cooperation agreements, selecting a contractor, writing grant applications and approving project payments.

The State will not initiate projects where it is known that hazardous materials are present. If there is an indication of a potential of hazardous materials, then the State will do testing prior to contacting the Contractor. However, there is always the possibility of unforeseen problems resulting in the stoppage of a project.

The selected contractor will be required to meet with State personnel at the project site to conduct a site evaluation, discuss project issues and begin the negotiation process on project feasibility, conceptual design and costs for each project.

7. CONTRACTOR SELECTION

The State may select a term contract holder from the Environmental Services Contract-Home page under MT Wetlands Legacy Projects as provided under the state's website address <http://www.discoveringmontana.com/doa/gsd/procurement/TermContracts/environservices/Default.asp> , taking into consideration such things as the contractor's expertise, requirements and location of the project, the contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on State and public projects, identified subcontractors and total project cost.

7.1 General. Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC).

7.2 Request for Quotation (RFQ) procedures. The ordering agency must provide an RFQ, which includes the statement of work and limited but specific evaluation criteria (e.g., experience and past performance), to all TC contractors. The RFQ may be posted to the agency's state website to expedite responses.

7.3 Statement of Work (SOW's). All SOW's shall include at a minimum a detailed description of the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge).

- (1) Ordering agency may select a contractor from the appropriate list and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (Exigency).
- (2) Ordering agency may place orders at, or below the \$5,000 threshold with any term contract contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all contractors.
- (3) For orders estimated to exceed \$5,000 but less than \$25,000.
 - (i) The ordering agency shall develop a statement of work.
 - (ii) The ordering agency shall provide the RFQ (including the statement of work and evaluation criteria) to at least three TC contractors.
 - (iii) The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the statement of work.
- (4) For orders estimated to exceed \$25,000. In addition to meeting the requirements of 3 above, the ordering agency shall:
 - (i) Provide the RFQ (including the statement of work and the evaluation criteria) to all TC contractors .

7.4 Evaluation. The ordering agency shall evaluate all responses received using the evaluation criteria provided in the RFQ to each TC contractor. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC contractors. If an unsuccessful TC contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

- 7.5 Minimum documentation.** The ordering agency shall document:
- (1) The TC contractors considered, noting the contractor from which the service was purchased;
 - (2) A description of the service purchased;
 - (3) The amount paid;
 - (4) The evaluation methodology used in selecting the contractor to receive the order;
 - (5) The rationale for making the selection;
 - (6) Determination of price fair and reasonableness.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor contractor selection by using the information provided in the annual term contract usage reports.

Contractor's who fail to respond to three (3) RFQ opportunities within a one-year period between July 1st and June 30th, may be removed from the qualified list of contractors.

8. CONSIDERATION/PAYMENT

8.1 Payment Schedule. In consideration for the Montana Wetlands Legacy projects to be provided, the State shall pay according to the prices listed in Attachment B. Project budgets will be negotiated for each individual project. However, all rates, terms and conditions set forth in this term contract will be applied to individual contracts.

8.2 Invoicing Methods. The State reserves the right to choose the invoicing method from the following: (1) Prime contractor's billing will include the subcontractors charges and payment will be made to the prime; or (2) Prime and subcontractors will bill the State separately and the State will pay each directly.

8.3 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

9. COST/PRICE ADJUSTMENTS

9.1 Price Increases Negotiated Based on Increases in Contractor's Costs. Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value. Contractor must provide written, verifiable justification for any cost adjustments they request during each renewal period. Contractor shall provide its cost adjustments in both written and electronic format.

10. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the project description, total dollars expended, and the name of the agency purchasing the services. The first report for this term contract will be due July 16, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

11. CONTRACTOR REGISTRATION

The Contractor is required to be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Mont. Code Ann. § 39-9-401.)

Contractor Registration Number: 51779

12. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold 1 percent of all payments and to transmit such monies to the Department of Revenue.

13. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, at least 50% of the workers of each contractor engaged in construction services must be performed by bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction and Nonconstruction services. The booklets containing Montana's 2003 Rates for Heavy Construction and Nonconstruction Services are attached.

The most current Montana Prevailing Wage Booklet will automatically be incorporated at time of renewal. It is the contractor's responsibility to ensure they are using the most current prevailing wages during performance of its covered work.

14. ACCESS AND RETENTION OF RECORDS

14.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

14.2 Retention Period. The Contractor agrees to create and retain records supporting the Montana Wetlands Legacy projects for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

16. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

17. REQUIRED INSURANCE

17.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

17.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

17.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

17.5 Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.6 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

17.7 Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

17.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees,

and volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

17.9 Certificate of Insurance/Endorsements. A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

18. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, upon expiration.

19. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

20. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

21. PATENT AND COPYRIGHT PROTECTION

21.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

21.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

22. CONTRACT TERMINATION

22.1 Termination for Cause with Notice to Cure Requirement. The State may terminate this contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this contract after giving the Contractor written notice of the stated failure. The written notice must demand

performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

22.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

23. STATE PERSONNEL

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

23.1 State Contract Manager. The State Contract Manager identified below will be the single point of contact for the coordination of all contract issues under this contract. The State Contract Manager will meet with the Contractor Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The State Contract Manager for this contract is:

Robert Oliver, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-0110
Fax #: (406) 444-2529
E-mail: ROliver@mt.gov

23.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Tom Hinz, Coordinator
Montana Wetlands Legacy
1400 South Nineteenth
Bozeman MT 59718
Telephone #: (406) 994-7889
Fax #: (406) 994-4090
E-mail: thinz@montana.edu

24. CONTRACTOR PERSONNEL

24.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

24.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Jeff Leety
PO Box 1384
482 Electric Ave Suite 5
Bigfork MT 59911
Telephone #: (406) 837-0804
Fax #: (406) 837-0842
E-mail: jeff@oasisenviro.com

24.3 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

Jeff Leety
PO Box 1384
482 Electric Ave Suite 5
Bigfork MT 59911
Telephone #: (406) 837-0804
Fax #: (406) 837-0842
E-mail: jeff@oasisenviro.com

25. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

26. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

27. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract,

except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

28. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

29. SCOPE, AMENDMENT AND INTERPRETATION

29.1 Contract. This contract consists of 11 numbered pages, any Attachments as required, RFP #SPB04-878P, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

29.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135**

**OASIS ENVIRONMENTAL
482 ELECTRIC AVE SUITE 5
BIGFORK MT 59911
FEDERAL ID # 92-0155937**

BY: Penny Moon, Contracts Officer
(Name/Title)

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

ATTACHMENT A CONTRACTOR'S RFP RESPONSE

3.3.11 Subcontractors

- **Equipment Operators**
 - A) Devers Excavation & Aquatics
PO Box 1131
Dillon, MT 59725
Contact: Justin Devers – 406.683.3560
 - B) Mike Adkins Excavation
19 Chicory Rd.
Pray, MT 59065
Contact: Mike Adkins - 406.579.4408
 - C) Hogenson Construction
416 Elliot St N
Wilsall, MT 59086
Contact: John Hogenson – 406.578.2149
- **Stream and Wetland Restoration Companies**
 - A) Frank Stewart, P.E.
3260 Prairie Smoke Drive
Bozeman, MT 59718
(406) 586-0790
 - B) Barney Hallin, L.S.
1318 West Front St.
Livingston, MT 59047
(406) 222-1303
 - C) Tom Sharp, Ph.D.
321 E. Main St., Ste. 402C
Bozeman, MT 59715
(406) 587-2010
- **Riparian Revegetation Specialists**
 - A) David Jensen
Livingston, MT 59047
(406) 539-9472

4.1.1 References.

ADC Services, Inc. will provide references as requested but will also provide project information here as requested in sub-section **4.1.4 Previous Projects**

• **Jack Creek Ranch – Montana Department of Transportation Montana Wetlands Legacy**

Location: Jeffers, Montana

Contact Persons: Larry Urban, Wetland Mitigation Specialist, MT Dept. of Transportation: (406) 444-6224, lurban@state.mt.us

Tom Hintz, Fish Wildlife & Parks: (406) 994-7889

Rick Webel, Jack Creek Ranch: (516) 674-4200

Project Dates: Design, Permitting and Contractual Agreements – 2001 – 2003
Construction & Revegetation – 2003 - Current

Project Cost: \$815,000

Project Team:

Tom Coleman – Project Leader; Client communication, Survey, Design & Mitigation Coordination

Russell Smith – Assistant Project Leader; Sub-Contractor Communications, Revegetation Coordination

DeWitt Dominick – Geomorphology and Stream Channel Design Review

Brandy Logan – On-Site project Management; Design, Layout, Supervision

Jeannette Romig – Soils and Hydrologic Mapping; Layout, Revegetation Team

Max Hjortsberg – Revegetation Team Leader; Materials Coordination & Implementation

Karen Christiansen – Greenhouse Manager; Herbaceous Wetland Production

Meghan Mutch – Nursery Coordinator; Native Plant Identification, Containerized Shrub Production

Barney Hallin – Survey

- **Cloud Ranch – Montana Department of Transportation Montana Wetlands Legacy**

Location: Big Timber Creek; Montana

Contact Person: Larry Urban, Wetland Mitigation Specialist, MT Dept. of
Transportation: (406) 444-6224, lurban@state.mt.us

Tom Hintz, Fish Wildlife & Parks: (406) 994-7889

John Heminway, Cloud Ranch: (917) 842-9799

Project Dates: Spring, Summer – 2000

Project Cost: \$ 120,000

Project Team:

Tom Coleman – Project Leader; Client communication, Survey, Design & Mitigation Coordination

Russell Smith – Assistant Project Leader; Sub-Contractor Communications, Revegetation Coordination

Brandy Logan – On-Site project Management; Design, Layout, Supervision

Jeannette Romig – Soils and Hydrologic Mapping; Layout, Revegetation Team

Max Hjortsberg – Revegetation Team Leader; Materials Coordination & Implementation

Karen Christiansen – Greenhouse Manager; Herbaceous Wetland Production

Meghan Mutch – Nursery Coordinator; Native Plant Identification, Containerized Shrub Production

- **Fleshman Creek Restoration**

Location: Fleshman Creek, Livingston, Montana

Contact Person: Gary Weiner, National Park Service: (406) 587-1667

Steve Golnar, City of Livingston: (406) 222-2005

Project Dates: Spring 2004

Project Cost: ~\$ 11,000

Project Team:

Tom Coleman – Project Leader; Client communication, Survey, Design & Mitigation Coordination

Russell Smith – Assistant Project Leader; Sub-Contractor Communications, Revegetation Coordination

Brandy Logan – On-Site project Management; Design, Layout, Supervision

Jeannette Romig – Soils and Hydrologic Mapping; Layout, Revegetation Team

Max Hjortsberg – Revegetation Team Leader; Materials Coordination & Implementation

Karen Christiansen – Greenhouse Manager; Herbaceous Wetland Production

Meghan Mutch – Nursery Coordinator; Native Plant Identification, Containerized Shrub Production

- **Renaissance Ranch**

Location: Pine Creek, Paradise Valley, Montana

Contact Person: Dan Todd, Renaissance Ranch
(732) 450-8974

Project Dates: Spring, Summer – 2000

Project Cost: \$ 885,000

Project Team:

Tom Coleman – Project Leader; Client communication, Survey, Design & Mitigation Coordination

Russell Smith – Assistant Project Leader; Sub-Contractor Communications, Revegetation Coordination

Brandy Logan – On-Site project Management; Design, Layout, Supervision

Jeannette Romig – Soils and Hydrologic Mapping; Layout, Revegetation Team

Max Hjortsberg – Revegetation Team Leader; Materials Coordination & Implementation

Karen Christiansen – Greenhouse Manager; Herbaceous Wetland Production

Meghan Mutch – Nursery Coordinator; Native Plant Identification, Containerized Shrub Production

- East Catron Creek Restoration**

Location: Bozeman, Montana

Contact Person: Gene Graff
(406) 587-7950

Project Dates: May 1998 – Current

Project Cost: \$112,000

Project Team:

Tom Coleman – Project Leader; Client communication, Survey, Design & Mitigation Coordination

Russell Smith – Assistant Project Leader; Sub-Contractor Communications, Revegetation Coordination

Brandy Logan – On-Site project Management; Design, Layout, Supervision

Jeannette Romig – Soils and Hydrologic Mapping; Layout, Revegetation Team

Max Hjortsberg – Revegetation Team Leader; Materials Coordination & Implementation

Karen Christiansen – Greenhouse Manager; Herbaceous Wetland Production

Meghan Mutch – Nursery Coordinator; Native Plant Identification, Containerized Shrub Production

Barney Hallin – Survey

Other Projects:

Project Example: As a subcontractor to Walsh Environmental, Inc. (Project Manager Jon Dausvardis, Phone # 303-443-3282), ADC provided revegetation services for ARCO on Lower Area One (LAO) in June of 2002. ADC successfully followed Walsh plans, planted plugs provided by other growers and transplanted wetland materials salvaged on Silver Bow Creek to revegetate three treatment cells.

Project Example: Working with Shannon & Wilson Engineers (Project Manager Steve McMullen Phone # 206-632-8020), ADC successfully revegetated a section of streambank on the Missouri River for Burlington Northern Railroad using willow cuttings, seed, hydro-mulch and containerized shrubs.

4.1.2 Company Qualifications

ADC Services, Inc.

#1 Ninth St. Island Drive
PO Box 582
Livingston, MT 59047

Phone: 406.222.7600

Fax: 406.222.7677

Email: info@adc-services.com

Contact Person: Russell Smith, President

ADC Services, Inc., incorporated in 1998, is a Livingston, Montana based company that specializes in aquatic and upland habitat enhancement, and wetland resource consulting and construction services. ADC emphasizes a multi-disciplined approach to projects: The staff includes, two fluvial geomorphologists, a fisheries biologist, two environmental scientists, a wetland ecologist, a bioengineering specialist, a horticulturist and a crew of dedicated technicians and growers. In our six years, we have completed dozens of stream and wetland restoration projects and successfully proven to our clients and permitting agencies that our team completes projects and project goals in an effective, creative and cost efficient manner. We have a keen understanding of the benefits that the Wetlands Legacy Program can provide Montana both ecologically and economically.

Many of ADC's projects have involved the Design-Build-Grow process (DBG). This innovative approach offers our clients a complete product, from start to finish. We find it advantageous to project success by utilizing non-standard construction techniques with our carefully chosen heavy equipment contractors and operators. In addition, our in-house team offers a comprehensive service base for competitive rates. By shortening the lines of communication, we provide turnkey services at a much higher efficiency. However, this philosophy does not preclude ADC from working with other firms, but serves to position us well with other Legacy project team members on a service-needed basis.

Stream & River, Lake & Wetland Specialization

ADC Consulting deploys a suite of resource analysis tools that allows for the most comprehensive reporting. Using fluvial geomorphology, biological analysis, water quality sampling, wetland ecology and economic feasibility, ADC gives complete and necessary information for projects, decision makers, and their clients.

ADC utilizes hydrological analysis, geohydrology, and watershed studies. Coupled with analysis of riparian vegetation inventories, our design team offers innovative designs using MicroSurvey© Digital Terrain Modeling, HEC-RAS and meta-modeling capabilities for a complete, long-term solution. In addition we have a firm knowledge of the most current bioengineered streambank and shoreline restoration techniques. Principals and staff have been trained in Rosgen Stream Classification systems, The Wetlands Institute and the Army Corps – Regulatory IV- Interagency Wetlands ID and Delineation programs.

Fluvial habitat creation involves a multi-tiered approach, which does not stop at design. With all ADC stream and river channel reclamation and construction projects, comes Project Management, Quality Control, Safety Protocols, Best Management Practices (BMP's) and Monitoring Programs that identify potential on-site Design/Build opportunities. Environmental variability is the number one cause of unsuccessful projects; DBG approach allows project administrators and clients to adjust for this variability if deemed feasible and cost-effective. We are also familiar with the process of mitigation crediting and have secured the necessary funding for the completion of several ADC projects.

Operations

ADC is strategically headquartered on the banks of the Yellowstone River in Livingston. Our proximity to rural Montana, modern economic centers and FWP Regional Headquarters in Bozeman and Billings gives us a unique opportunity to collect data, design and manage projects. In a relationship with the Montana Wetlands Legacy our staff of professionals, technicians, support personnel and associates has the capability to communicate with FWP via High-speed Internet, fax, phone, remote wireless voice and data.

For design and data exchanges we utilize Nikon Total Station survey equipment, CAD compatible design, 42" HP color plotter, seven PC's, and digital photographic and video equipment. In addition, we manage our client accounts, sub-contractors, supplier transactions and contracts with standardized and updated accounting practices and protocols. ADC consulting staff has continued the pursuit of professional education and knowledge through numerous training programs, conferences, professional affiliations and community outreach.

The ADC Native Plant Nursery

Our projects to date include comprehensive revegetation services including planting design, growing, implementation, and placement. This process includes collection, seeding, fertilizing, on-site plant growing and staging, and monitoring. Our planting survival rates and exemplary plant performance on projects are directly attributed to key ADC personnel and our quality products.

For the last three years many of ADC's projects have incorporated growing services and implementation. Our team of growers and planters can get the project done on time, and on budget. We have specific experience in obtaining necessary plant materials through seed and plant suppliers in Montana's Land Resource Regions, and by our in-house staff of collectors and identification specialists.

The nursery has been growing native upland and wetland plants for three years at our current location. We maintain approximately 4,000 ft² of climate-controlled greenhouses and over 15 acres of outside growing area. Our facilities include full-spectrum grow lights, propagation and germination chambers and a heating system for winter growing. Our field operation includes machines such as low-pressure tracked loaders, specialty willow planting equipment and hydro-seeding capabilities.

Our greenhouse operation maintains site-adapted inventory for areas within south central and southwestern Montana. We also provide contract-growing services for sites within the Rocky Mountain Region. Our nursery services include: harvesting native seed or collection of native stock, growing plants to requested specifications, hardening off and delivering plants to a project site. We also produce pre-vegetated coir fabric mattresses for areas with energy and erosion potential and where a more immediately restored look is required.

ADC Revegetation

Subcontractor Experience

- **Devers Excavation & Aquatics**

As the principal of Devers Excavation & Aquatics (DEA), Justin Devers has had a combined 16 years of experience in stream, wetland and water resource construction. His firm has demonstrated to ADC on multiple projects that his understanding of working in aquatic resources requires environmental sensitivity, foresight, thoughtful planning and staging.

Justin and his crew have completed over 19 miles of stream restoration and built emergent wetlands from one acre to fifty in size. Devers has been working with ADC since our inception in 1998 and was the primary excavation contractor on Jack Creek Ranch and Renaissance Ranch (Please see Section 4.1.4).

DEA Projects Examples:

5-90 Upper Boulder River MT; approximately 1950 linear ft irrigation diversion, pool, bank stabilization

5-90 Shields River MT; approximately 1400 linear ft irrigation diversion -for stabilization, bank stabilization channel reconstruction

8-91 Beaverhead River MT; irrigation diversion, channel stabilization, bank stabilization

5-91 Big Hole River MT; irrigation diversion, channel relocation and stabilization, bank stabilization

11-91 Big Hole River MT; approximately 370 ft irrigation diversion, bank stabilization, channel reconstruction

4-92 Fry Creek, Bozeman MT, approximately 950 ft channel relocation, spawning habitat; pool construction

6-92 Eagle Creek, Livingston MT, approximately 3200 ft stream restoration, spawning, pools, grade control

7-92 Big Hole River. Wisdom MT, Approximately 900 ft bank stabilization, deep water pools with habitat

3-93 Big Hole River MT, Approximately 1700 ft irrigation diversion systems, bank stabilization, pools 3-94 Boulder River, approximately 2700 ft stream, pools, spawning, channel stabilization, bank stabilization

4-94 Bear Creek, Bozeman MT. approximately 875 Jin/ft bridge installation, bank stabilization, grade control with fish ladder, spawning habitat, new stream channel on connecting ponds.

9-94 Greenwich CT., approximately 410 ft new stream construction, grade controls
10-95 Beau Creek, Bozeman MT. Approximately 6151in/ft new stream construction, spawning habitat, and pools
5-96 Gallatin River, Belgrade MT. approximately 1300-lin/ft Channel stabilization, bank restoration, pools
6-97 Horse Creek, Ennis MT, approximately 3400 ft stream reconstruction, spawning habitat, bank stabilization grade control structures
6-98 Klamath Falls OR, approximately 4800 ft new stream construction for spawning on a lake
5-99 Liberty NY , approximately 600 ft New stream construction, water falls, pools, spawning
4-00 Camp Creek, Manhattan MT. approximately 7800-lin/ft Stream restoration, spawning, pools, habitat
5- 00 Warm Springs Creek. Manhattan MT, approximately 1500 1in/ft Reconstruction stream, pools, Spawning habitat, bank reconstruction, stabilization
2-01 Warm Springs Creek, Dillon MT., approximately 10,400 ft Narrow channel bank reconstruction, pools, spawning
6-01 Renaissance Ranch, Pool Creek, Pine Creek MT (Please see Section 4.1.4)
3-02 Manhattan Creek, Manhattan MT, approximately 5600 ft Stream Restoration, spawning, pools, habitat
5-02 Baker Creek, Manhattan MT, approximately 6700 ft stream restoration, spawning, pools, habitat, bank stabilization
10-02 Baker Creek, Manhattan MT, approximately 500 ft Excavate sediment traps, bank stabilization.
6-03 Jack Creek Ranch, Ennis MT (Please see Section 4.1.4)

- **Mike Adkins Construction**

Mike Adkins Construction (MAC) has also been working with ADC from the company's inception and is one of our preferred contractors for our projects. His teams of operators are familiar with our techniques and have also demonstrated construction expertise with water resources.

In general, Adkins has demonstrated flexibility in terms of scheduling, budgets and completion time frames. Mike and his crew have successfully completed wetland, stream and river enhancement projects with us and currently are working on three ADC projects. The following details a few sample project types:

Root Wad Revetments/Bank Stabilization

MAC has completed bank stabilization projects that incorporated root wads as an integral part of the stabilization design. Aquatic engineering companies designed all projects and clients included two private landowners on Mission Creek, Mill Creek and Park County at the Yellowstone River, Mayors Landing fishing access site in Livingston.

Barb Construction/Bank Stabilization

MAC has completed numerous engineered barb installations on the Yellowstone River. Clients include 5 private landowners and the Park Branch Canal Board in Livingston, MT.

Fish Migration Barrier Construction

MAC constructed a fish migration barrier on Mill Creek in Paradise Valley, MT. The US Forest Service provided construction plans.

Jackson Creek Weir Construction

MAC constructed channel bedrock weir structures in a reach of Jackson Creek east of Bozeman, MT. Construction funding and design was provided by the Montana Department of Transportation.

- **Hogenson Construction**

Hogenson Construction has been working with ADC for approximately three years and also has excellent operators that have the necessary skills and experience working in water resource reclamation. Hogenson Construction is currently working with us on two projects.

Hogenson has worked on twelve other wetland enhancement projects, over a dozen stream habitat projects and worked with most resource-consulting firms in the Bozeman, MT area. He is based out of Wilsall, MT and

has an excellent working relationship with agency personnel and the local community.

4.1.4 Previous Projects

- **Jack Creek Ranch – Montana Department of Transportation**

Montana Wetlands Legacy

Project Description:

An extensive wetland mitigation supplied wetland credit to MDOT for road building activities in Madison County. ADC provided a turnkey approach to the project by designing, contracting, custom growing, and by implementing the construction and revegetation efforts.

The design for the wetland portion of the restoration project focused on returning wetland hydrology to approximately 80 acres of drained wetlands in the vicinity of a drainage ditch system. The elimination of the ditch system has enabled subsurface and surface hydrology to once again return and influence the vegetative community of the field. In addition to restoring the sites historic hydrology, structural diversity of the wetlands was also enhanced by creating approximately 4.1 acres of shrub/scrub type wetlands, and approximately 1.1 acres of shallow excavations that are seasonally inundated during high-water table conditions. The shallow excavations will also retain and store rainwater.

The project also included construction of 9,300 feet of spring creek channel within the existing over-widened McKee Spring Creek. Due to its proximity to the Madison River with its reliable source of high quality spring water, McKee Spring Creek was historically an important spawning tributary for the Madison River. Alterations in the recent past to the structure of the creek left it severely degraded. The work on McKee Spring Creek revolved around restoring and enhancing fluvial fish habitat, restoring the channels hydraulic efficiency, and restoring adjacent scrub/shrub and emergent wetlands. The project, backed by a conservation-minded land ownership ethic, returned McKee Spring Creek to a dimension more consistent with what would be expected in undisturbed environments based on flow regime, valley slope, and bed and bank materials.

Analysis of the data led to the selection of a target channel type that is very narrow in relation to its depth, characterized by vertical and often undercut banks. Channel banks are bound together by a good stand of herbaceous wetland vegetation, combined with deep-rooted woody shrubs. Based on the channel bed and bank materials along the McKee Spring Creek corridor, the target channel cross section was comparable to an E5 channel under the Rosgen Classification System. The basic channel section was then refined through hydraulic analysis using HEC-RAS water surface profile software.

For the revegetation goals of the project, ADC Nursery custom grew and installed approximately 58,600 sedge and rush plugs, and planted approximately 4,000 woody and herbaceous plants across the project; in addition, wetland and upland seed was broadcast across the disturbed areas.

The revegetation strategy included on-site transplants and seed collections, which were brought back to the growing facility and propagated. Our efforts will continue in 2004, including more woody and herbaceous transplants and a monitoring program through 2006.

- **Cloud Ranch – Montana Department of Transportation**
Montana Wetlands Legacy

Project Description:

The Cloud Ranch is located approximately 12 miles north of Big Timber, Montana on the east slope of the Crazy Mountains. Big Timber Creek provides excellent habitat for a well-documented population of native Yellowstone Cutthroat trout. The ranch contains a one-mile reach of Big Timber Creek, which was severely disturbed during the 1990's. After a rare fall flood, the previous owner used a bulldozer to modify the channel in an apparent attempt to mitigate future flood impacts. The modifications resulted in a straightened and widened channel. Channel bed materials were used to create dikes along much of the left bank margin. The alterations

to the natural channel and floodplain caused accelerated degradation and impairment to the surrounding riparian wetland and floodplain habitat.

ADC was retained by the Cloud Ranch to develop a stream and floodplain restoration plan for the impacted reach of Big Timber Creek. The channelized segment of the creek was restored to a meandering channel pattern, and associated gravel point bars were densely vegetated with willows and cottonwood plantings. The artificial dikes were removed, allowing the floodwaters to spread out, re-connecting the channel to its floodplain. Likewise, a large portion of a marginal shallow pond was deepened and water draining the pond was designed to support an extensive sedge wetlands meadow. As a result of these restoration efforts, 5.5 acres of riparian and emergent wetland were restored on the bottomland of Big Timber Creek.

Wetland banking credits were accepted by and sold to Montana Department of Transportation (MDT). These funds paid for a large portion of this project, restoring and increasing the natural resource values of the land.

- **Renaissance Ranch**

Project Description:

Services provided at the Renaissance Ranch included streambank stabilization, instream improvements, complete channel creation, and creation of a six-acre lake and emergent wetlands. A perennial channel, Pool Creek, had been historically impacted through cattle and domestic buffalo grazing and watering. In addition, the creek had been dredged in an attempt to secure a winter water supply. The lower end of the creek was also dammed to provide summer livestock water.

ADC was hired by a new landowner to restore a 2,500-foot reach of the Yellowstone River tributary. The project design included restoration of channel plan form and profile, restoration of pool sequence, and creation of in-channel habitat features. The project also included creation of 1,400 feet of new channel to bypass existing on-channel pond. In order to enhance the completed fishery and spawning channel the Pool Creek flow is now augmented with a non-consumptive water appropriation (~9.3 cfs) from the Yellowstone River. All necessary permits (310's, 404, 3A, Water Rights, County Floodplain Permit) were obtained through in-house design documentation.

An ADC Revegetation Team completed all the planting, seeding and cuttings utilizing either on-site transplants, or nursery stock from the ADC Nursery. As a result of the large amount of soil disturbance during the restoration project, planting and seeding was extensive. The use of on-site materials such as wetland and upland sod, clean sub-soil mulch and woody debris, helped to insure transplant as well as nursery stock survival.

- **East Catron Creek Restoration**

Project Description:

The Gallatin Center, Inc. retained ADC Services, Inc. to relocate and enhance a straightened and channelized reach of East Catron Creek in Bozeman, Montana. ADC worked closely with MT Fish Wildlife & Parks and the landowner to create a working configuration for creek relocation, which fit within a meander corridor specified by the developer that increased stream length and fish habitats required by the permitting agencies. The restoration design included plan form and profile design as well as hydraulic analysis and HEC-RAS model development. Design criteria included flood plain capacity to convey a 100-year flood without impacting surrounding infrastructure.

ADC Services, Inc. provided oversight on the project from initial planning through construction and revegetation. The revegetation plan included obligate wetland plants through the saturated zones. Transitional zone plantings include rushes, sedges, willow, dogwood, cottonwood, aspen and upland forbs and wildflowers. In order to out-compete invasive species such as Reed Canary Grass, the streambanks were planted at ½ foot and smaller intervals for quicker vegetative establishment.

4.1.5 Staff Qualifications

Tom Coleman

Principal – ADC Services, Inc.

EDUCATION

M.S., Environmental Engineering, University of Tennessee, TN, 1994

B.S., Civil Engineering, University of Tennessee, TN, 1990

EXPERIENCE

Tom has been working in the field for 10 years and has been the co-owner of ADC Services, Inc. since 1998. He is currently a Certified Engineer in Training with the American Society of Civil Engineers. He has gained experience with biological and physical habitat inventories, collection of fish population data and native species restoration with the National Park Service and the U.S. Fish and Wildlife Service.

Tom has led stream restoration projects from data collection through design, permitting and construction. These projects involved stream creation and relocation, fluvial habitat enhancement, diagnostic studies, and pond design and construction. A broad grasp of topics including fluvial engineering, geomorphology, permitting, CAD design, and HEC-RAS modeling allows Tom to manage stream restoration projects from start to finish.

Tom's diverse experience integrates biological and earth sciences with hydrology and hydraulic engineering. He focuses his energy on innovative strategies to aquatic enhancement and restoration that emphasizes the use of natural materials to create functional and aesthetically pleasing designs.

Tom has continued his professional development by attending short courses on natural stream channel design, Rosgen stream channel classification, applied fluvial geomorphology, and river morphology and applications.

AREAS OF EXPERTISE

Aquatic habitat restoration planning, design and supervision; bioengineered stream bank stabilization; fluvial geomorphology and hydraulic analysis; stream, river and wetland restoration; CAD, surveying, digital terrain models and HEC-RAS water surface profile models; permitting; and proposal, assessment and alternatives analysis report preparation.

AFFILIATIONS

- American Society of Civil Engineers (ASCE)
- Engineer in Training Certification (EIT)
- Joe Brooks Chapter Trout Unlimited (TU)

Russell Smith

Principal – ADC Services, Inc.

EDUCATION

B.A., Environmental Conservation, University of Colorado, CO, 1993

B.S., Minor Biology, University of Colorado, CO, 1993

A.A., Building Construction, Dean College, MA, 1988

EXPERIENCE

Russell has been working in the environmental consulting industry for 14 years. Since 1998, he has been the co-owner and principle of ADC Services, Inc. Russell is responsible for the formation, design, execution, and supervision of the aquatic resource projects for ADC. He has served on design committees and overseen the construction of projects in Montana, Wyoming, Colorado, New Mexico, and Connecticut. As president of the company, Russell now has taken a leadership role in developing company protocols for watershed related projects.

Russell has worked extensively on the reclamation of wetlands and waterways denuded by agricultural practices as well as the reclamation of urban streams. He has given presentations at symposiums for city planners of the benefits to improving urban streams such as stability, water quality, aesthetics, aquatic wildlife value, and recreational opportunities.

Russell has continued his wetland training with the Army Corps of Engineers; Regulatory IV – Interagency Wetlands Identification & Delineation.

AREAS OF EXPERTISE

Revegetation and land reclamation planning, design and supervision; ecological restoration; biological review, sampling, analysis, report and presentation; fish habitat assessment; construction logistics, oversight, site management and review; topographic and biological survey of streams, rivers, ponds, lakes and wetlands; computer assisted design and drafting; wetland habitat analysis and delineation; aerial photo interpretation; USGS topographic map interpretation.

AFFILIATIONS

- Society of Wetland Scientists (SWS), WPIT
- Society of Ecological Restoration (SER)
- Montana Nurseryman and Landscape Association (MNLA)
- Montana Natural Resource Professionals (MNRP)

DeWitt Dominick

EDUCATION

M.S., Watershed Science, Utah State University, UT, 1997

B.A., Geography and Environmental Sciences, Middlebury College, VT, 1991

Graduated with Honors

EXPERIENCE

DeWitt has eight years of applied experience as a fluvial geomorphologist with an emphasis in riverine sediment dynamics, riparian plant and stream ecology, fisheries habitat assessment, stream restoration, and management of regulated rivers. His background consists of project research and management, working on multiple spatial and temporal scales, from an entire watershed inventory and reach-based classification to at-a-station hydraulic and channel geometry assessment. DeWitt has worked on government and privately funded projects located in wildland montane and desert environments, as well as highly developed urban watersheds affected by major infrastructure and flood management issues. DeWitt's professional career as a scientist has taken him throughout the United States including Montana, Wyoming, Oregon, Washington, Wisconsin, Missouri and Texas.

Project Example- Bitterroot River –MDOT Stream Mitigation Study, Ravalli County, MT. DeWitt provided project management, field mapping, GIS database development, and evaluation of the geomorphic character and condition of over 60 miles of the main stem of the Bitterroot River. Project objective included a cumulative effects analysis and historic evaluation of highway system impacts on channel and floodplain morphology. Six bridge structures were assessed to determine their relative effects on channel and floodplain function. Viable mitigation alternatives and strategies were developed to minimize and compensate for the transportation system impacts to the river system.

In recent years, DeWitt has provided design and construction oversight during the implementation phase of many natural river channel design projects. DeWitt's background in fluvial process and working knowledge of various plant and modern construction materials has been a tremendous asset for numerous water resource projects that require restoration of channel and floodplain ecological function and value.

AREAS OF EXPERTISE

Geomorphic and ecologic assessment of both form and process of river systems; hydrologic analysis; stream ecology; riparian wetland restoration; wildland watershed management; computer modeling (GIS); permitting;

field survey and mapping; concept development and alternatives analysis; historical analyses; and site stability assessment.

AFFILIATIONS

- Society of Wetland Scientists (SWS)
- American Water Resources Association (AWRA)
- International Association of Geomorphologists (IAG)

Brandy Logan

EDUCATION

B.S., Geography and Earth Resources, Utah State University
Graduated with Honors

EXPERIENCE

Brandy has four years of professional experience in the field of fluvial geomorphology and aquatic habitat restoration. She has been involved with construction oversight, management and report preparation for a number of ADC's river, wetland and pond restoration projects. She also has great deal of experience with surveying, drafting software, aerial photo orthorectification and interpretation, site investigations and data mining.

Prior to working for ADC, Brandy was a field crew leader for an extensive research project conducted in Whatcom County, WA where she managed 3-7 people, scheduled fieldwork and tasks for a four-month field season. Her work included detailed surveys of stream geometry and water surface profiles, collecting temperature and discharge measurements, in addition to habitat and substrate mapping. Her office responsibilities included analysis of field data, reduction of survey data, and all steps necessary to prepare data for hydraulic modeling. She ran, tested and modified two-dimensional fish habitat models and wrote a field manual for instructing new employees. Brandy has also been involved with extended field studies of endangered fish on the Colorado, Green and San Juan Rivers.

AREAS OF EXPERTISE

Extensive survey and mapping skills; comprehensive hydrology and geomorphology field and data analysis; research and field experience with a survey of endangered fish; site management for river, stream and spring creek restoration; section 404 permitting; and technical report writing.

AFFILIATIONS

- American Geophysical Union (AGU)

Dave Mandrella

EDUCATION

B.S., Fisheries / Aquatic Ecology, University of Michigan, MI, 1975.

EXPERIENCE

Dave worked for the U.S. National Forest Service as fisheries biologist from 1990-2004 and has 26 years of field experience. His 14 years of experience with the NFS has provided him with a strong interdisciplinary background in, lake and stream management along with fish population/habitat relationships, habitat restoration, stream and riparian ecology, native species restoration, fluvial geomorphology, forestry, soil science, and geology. He has developed and implemented plans related to the protection and restoration of lake, riverine, riparian and wetland ecosystems by evaluating the impacts of Forest and non-Forest Service activities of fish and wildlife populations and habitat. Habitat restoration and enhancement projects that Dave has implemented include restoring wetland hydrology; rehabilitating eroding banks and in-stream aquatic habitat through bioengineering techniques; reestablishing fish passage; and planting native trees and shrubs. Dave is familiar with section 303 (d) The Total Maximum Daily Load program and has extensive experience with permit preparation for fulfilling section 404 requirements. He has prepared watershed analyses reports,

habitat restoration proposals, lake and stream management recommendations, Yellowstone cutthroat trout sub-basin plans, range management revisions, environmental assessments, biological evaluations, KV plans and project monitoring reports. He has also effectively promoted partnerships and cooperative agreements with federal, State, and local agencies as well as with landowners to preserve and restore riverine, riparian and wetland habitat on private and public lands.

Dave has continued his professional development through a number of educational courses including: Applied Fluvial Geomorphology (David Rosgen), Natural Resource Inventory System, Hydrology and Watershed Management, GIS/ ARC VIEW, Watershed Restoration: Design and Implementation, Aquatic Ecological Classification, Practical Approaches to Riparian Restoration, NEPA Training, Stream Restoration and Natural Channel Design Workshop, Basin-wide Stream Habitat Surveys and Application, and Wildlife Habitat Management Shortcourse.

AREAS OF EXPERTISE

Plan, coordinate and execute field inventories for aquatic TES species, stream and lake habitat assessments and fish population estimates at the watershed and sub-basin scales; Rosgen stream classification; planning and implementation of water quality, aquatic habitat, and geomorphic monitoring programs; development and implementation of stream restoration, bank stabilizations and protection structures and techniques; installation of spawning channels, non-native fish barriers, and fish passage structures; groundwater and surface water sampling and chemical analysis; advanced statistical analysis; computer modeling (GIS); section 303(d) and section 404 permitting; TDML; Environmental Assessments and Environmental Impact Statements; and various technical report preparation.

AFFILIATIONS

- American Fisheries Society (AFS)
- Trout Unlimited (TU)

Jeannette Romig

EDUCATION

M.S., Earth Science, Montana State University, MT, 2004

B.S., General Science, University of Oregon, OR, 1997, Graduated with Honors

EXPERIENCE

Jeannette has worked in the private consulting industry for the last five years. She is responsible for wetland delineations and report preparation, as well as construction and revegetation oversight for wetland, stream and pond projects for Aquatic Design & Construction, Inc.

Jeannette began her consulting career in Alaska where she collected and analyzed contaminated soil, surface water and groundwater samples for large-scale projects funded by the Corps of Engineers, Department of Defense, Environmental Protection Agency, and State of Alaska. These projects involved site assessment, remediation and long-term monitoring for both wetland and riparian habitats. She has performed a noise impact study for an oil refinery. She was also involved with facilitating tribal community and military Restoration Advisory Board meetings in various remote locations throughout Alaska.

Since moving to Montana, Jeannette has earned her Masters of Science degree giving her strong analytical background in groundwater hydrology and soils, as well as large database management and advanced statistical analysis. Jeannette has performed both large-scale (100acre) and small-scale wetland delineations (in accordance with the 1987 Corps of Engineers wetland delineation guidelines) for government agencies and private landowners in Montana. In September 2003, she attended the Wetland Training Institute course entitled, "Wetland delineation with emphasis on soils and hydrology" where she was introduced to innovative techniques for wetland delineation and impact assessment.

AREAS OF EXPERTISE

Wetland habit analysis and delineations; site management for wetland restoration and revegetation; wetland delineation, mitigation, and alternatives analysis report preparation; stream and spring creek reclamation site management and revegetation; section 404 permitting; construction logistics and site management; soil sampling, texturing and analysis; surface water and groundwater sampling and analysis; groundwater monitoring well installation; topographic survey of streams, ponds and wetlands.

AFFILIATIONS

- Society of Wetland Scientists (SWS)

Barney Hallin, L.S. - Associate

EDUCATION

B.S., Physics, Montana State University, MT, 1979, Graduated with Honors

EXPERIENCE

Barney has 26 years of professional land surveying experience. He has been a land surveyor with Hallin & Associates since 1988 and has been registered as a Professional Land Surveyor since 1991. In addition to his experience with residential, commercial and industrial surveying, Barney has worked on a number of aquatic-related projects with Hallin & Associates. These projects involved floodplain boundary determinations along the Yellowstone and Main Boulder River, as well as Mill Creek (Paradise Valley, MT). Other aquatic-related work includes numerous boundary projects in which ownership of the stream bed, banks and islands were determined. Barney has completed over 60 topographic mapping projects using GPS, traditional mapping skills, and 12 Aerial Photogrammetry Control networks.

AREAS OF EXPERTISE

Land surveyor, party chief and instrumentation man with responsibilities involving establishing new property boundaries, section breakdown, old boundary retracement, corner search & re-establishment, horizontal and vertical control networks (using GPS-RTK and post processing traditional methods), corner recordations, deed research, legal descriptions, topographic mapping, flood plain elevations, water flow measurements, site stake-out, roadway design precise microwave tower alignments and microwave path studies, as well as drafting (CAD-Microstation and hand experience).

David Jensen

EDUCATION

B.S., Disturbed Land Rehabilitation, Minor Range Science, Montana State University, MT, 1995

EXPERIENCE

David is sole proprietor of Native Landscapes & Reclamation, a successful seven-year-old company specializing in large-scale residential landscapes and construction site reclamation. He coordinates and oversees projects throughout southwest and south central Montana. Dave has extensive experience in the use of erosion control mats, hydro seeding, as well as installation of plugs and containerized plant products.

David also has extensive experience in machine operation including backhoe, loaders and hydro seeding equipment. His knowledge of reclamation planning, logistics and monitoring has helped our company for three years.

AREAS OF EXPERTISE

Mined land reclamation; methods of revegetating severely disturbed sites, sampling and analysis of vegetative success; soils assessment; mapping, sampling, and analyzing pre-mined and post-mined soils; mined land reclamation planning, permitting, and oversight.

Tom Sharp, Ph.D. - Associate

EDUCATION

Ph.D., Civil Engineering, Montana State University, MT, 1999
M.S., Environmental Engineering, Montana Tech of the University of Montana, MT 1996
M.S., Biological Sciences, Montana State University, MT, 1993
B.S., Biological Sciences, Montana State University, MT, 1988

EXPERIENCE

Tom Sharp has worked in the civil and environmental engineering field in Montana since 1995 and is now the president of his own company, Sharp Corp., which has been in business since 2002. Prior to 1995 he worked for seven years as a biologist in Montana, Washington and North Carolina. In April 2004, Tom took the Professional Engineer Exam and will get the test results in June, 2004.

Tom has designed and prepared feasibility studies, treatability studies, and engineering cost analysis reports for a number of large-scale projects requiring the use of constructed wetlands and/or lagoons for treating waters and sediments impacted by historic mining. Other work related to these projects involved modeling the effect of bioeochemical carbon, nitrogen and phosphorus cycling on pH and CO₂ equilibria in the constructed wetlands and treatment lagoons for removing metals from surface and groundwater. He has designed and prepared environmental impact statements, remedial investigation and site characterization reports, including fate and transport reports for several mining operations in Montana. Tom's limnology, hydrology and aquatic background has enable him to develop water quality monitoring programs; characterize water chemistry, physical limnology and sediment samples; prepare QA/QC plans and surface water sampling plans for EPA Region 10; evaluate flood frequencies using USGS protocols; and prepare state hydrographs using hydraulic modeling software.

Tom has continued his professional development by attending the following short courses and workshops: Watershed Modeling System (WMS) Software Workshop (ASCE); Watershed Modeling Workshop, Water Environment Federation Watershed Conference; TMDLs – Opportunity or Controversy for the San Francisco Bay Area Seminar; ArcView GIS for the Environmental Professional.

AREAS OF EXPERTISE

Constructed wetlands; groundwater remediation; site characterization; chemical and biological wastewater treatment; contaminated sediments; giohydrology; hydrology; limnology; aqueous geochemistry; microbial ecology; TMDL; ArcView, GIS, Flowmaster, PHREEQC, and statistical software.

AFFILIATIONS

- Society for Mining, Metallurgy, and Exploration

Frank Stewart, P.E. - Associate

EDUCATION

M.S., Civil Engineering, Montana State University, 1988
B.S., Electrical Engineering, University of Alabama, 1974

EXPERIENCE

Frank Stewart has been working as an engineer for the last 29 years, is a registered Professional Engineer, and has owned Stewart Engineering since 1997. He has recently completed projects involving design and oversight of ponds, dams, pipelines, and open channels; aquifer testing and modeling; and mathematical modeling of biofouled pipelines. Frank has written a number of successful federal grant applications for R & D projects and served as the design engineer and/or project manager for these projects. He is experienced with investigation and remediation of leading petroleum tanks and pipelines. Frank is a registered Septic Site Evaluator in Gallatin County, Mt. These investigations include groundwater and surface water sampling for nitrate, hydraulic conductivity calculations, groundwater gradient determination, calculation of nitrate and

phosphorus plumes, contour mapping, data tabulation, design of septic systems, and reporting. This work has provided a strong background in practical field methods of data collection, as well as experience in computer mapping and reporting to governmental agencies.

AREAS OF EXPERTISE

Design of pressure and gravity-flow pipeline systems; aquifer testing and analysis; design of groundwater pumping systems; design of pond and dams; design and modification of stream channels; design of fire suppression systems; development of budgets and timelines; completion of structural applications in accordance with federal requirements; development of installation specifications; budget oversight and management; production of as-built manuals; code generation for imbedded micro controllers; user-interface design and code generation for PC-based interactive applications; CAD products; statistical analysis and graphical presentation of data.

Meghan Rae Mutch

EDUCATION

B.S., Horticulture, Montana State University, MT, 2003

EXPERIENCE

Meghan has five years of experience working in nurseries in southwest Montana. She is responsible for coordinating field collections and identification for our revegetation projects at ADC. She also organizes and supervises the production of large-scale native wetland and non-wetland plant orders. She supervises maintenance crews for all indoor and outdoor growing. Meghan has experience in greenhouse seed and cutting propagation. She is currently in charge of updating the nursery inventory and organizing protocols for our subsequent years' plant growing.

In addition, Meghan has experience in woody plant propagation; plant physiology; horticultural science and technology; nutrient cycling, landscape management, irrigation systems and design; computer administration as well as database creation and management.

AREAS OF EXPERTISE

Identification of perennials, annuals, wildflowers and grasses, throughout USDA zones 3,4, and 5; coordination and oversight for large-scale native plant orders; extensive expertise in seed propagation, field planting, watering, transplanting, pruning and maintenance of revegetation; identification and control of plant pests; general problem solving skills in the greenhouse and outdoor growing areas.

Karen Christiansen

EDUCATION

Custer High school, Miles City, MT

EXPERIENCE

Karen has been in the greenhouse/nursery industry for 8 years in Montana. For the last four years, she has been responsible for managing and running the growing facilities for Aquatic Design & Construction, Inc. This includes plant propagation, production, identification; personnel and facilities management; inventory control, new plant protocol and budgeting; Karen also assists with sales and marketing as well as attending trade shows and conventions.

AREAS OF EXPERTISE

Native plant identification, propagation and production management for large-scale orders; greenhouse seed and cutting propagation, propagule collection and survival monitoring; identification and control of plant pests.

Max Hjortsberg

EDUCATION

B.A., History, Skidmore College, NY, 1996, Graduated w

EXPERIENCE

Max began his field experience as a Range Technician for the US Forest Service Administration 1993. He has been with ADC for the last three years and is responsible for field restoration design implementation. He is accountable for lining up all aspects of the wetland, stream and pond revegetation efforts including but not limited to: planning, coordination, supply and equipment acquisition, crew leader, equipment operation, topographic survey, daily construction report and budgeting as well as maintenance. Over the last three years, Max has become a very innovative problem solver in the field. He is also involved with plant identification and collection for ADC;s native plant nursery.

AREAS OF EXPERTISE

Field planting; crew leader, restoration design implementation, equipment operation, and budget oversight.

AFFILIATIONS

- Joe Brooks Chapter of Trout Unlimited, Board Member
- Park County Historical Society

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

Revised 11/03